



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-FV-12-0031; FV12-927-2 IR]

**Pears Grown in Oregon and Washington; Assessment Rate
Decrease for Processed Pears**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Processed Pear Committee (Committee) for the 2012-2013 and subsequent fiscal periods from \$7.73 to \$7.00 per ton of summer/fall processed pears. The Committee locally administers the marketing order which regulates the handling of processed pears grown in Oregon and Washington. Assessments upon handlers of Oregon-Washington processed pears are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-

mail: Teresa.Hutchinson@ams.usda.gov or
GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable

summer/fall processed pears beginning July 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2012-2013 and subsequent fiscal periods from \$7.73 to \$7.00 per ton for summer/fall processed pears handled. The assessment rate for "winter" and "other" pears for processing would remain unchanged at a zero rate.

The order provides authority for the Committee, with USDA approval, to formulate an annual budget of expenses and to collect assessments from handlers to administer the processed pear program. The members of the Committee are producers, handlers, and processors of Oregon-Washington processed pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011-2012 and subsequent fiscal periods, the Committee unanimously recommended, and USDA approved, the following three base rates of assessment: (a) \$7.73 per ton for any or all varieties or subvarieties of pears for canning classified as "summer/fall," excluding pears for other methods of processing; (b) \$0.00 per ton for any or all varieties or subvarieties of pears for processing classified as "winter"; and (c) \$0.00 per ton for any or all varieties or subvarieties of pears for processing classified as "other." The assessment rate for "summer/fall" pears applies only to pears for canning and

excludes pears for other methods of processing as defined in § 927.15, which includes pears for concentrate, freezing, dehydrating, pressing, or in any other way to convert pears into a processed product. This rate would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 30, 2012, and unanimously recommended 2012-2013 expenditures of \$842,137 and an assessment rate of \$7.00 per ton for summer/fall processed pears handled. In comparison, last year's budgeted expenditures were \$926,933. The assessment rate of \$7.00 is \$0.73 lower than the 2011-2012 rate. The Committee recommended the assessment rate decrease because of the 2012-2013 summer/fall processed pear promotion budget reduction.

The major expenditures recommended by the Committee for the 2012-2013 fiscal period include \$654,000 for promotion and paid advertising, \$137,447 for research programs, \$24,000 for contracted administration by Washington State Fruit Commission, and \$12,500 for market access and trade policy. In comparison, major expenses for

the 2011-2012 fiscal period included \$759,000 for promotion and paid advertising, \$117,243 for research programs, \$24,000 for contracted administration by Washington State Fruit Commission, and \$12,500 for market access and trade policy.

The Committee based its recommended assessment rate for processed pears on the 2012-2013 summer/fall processed pear crop estimate, the 2012-2013 program expenditure needs, and the current and projected size of its monetary reserve. Applying the \$7.00 per ton rate to the Committee's 120,000 ton summer/fall processed pear crop estimate should provide \$840,000 in assessment income. Thus, income derived from summer/fall processed pear handler assessments, and interest and other income (\$500) plus \$1,637 from the Committee's monetary reserve would be adequate to cover the recommended \$842,137 budget for 2012-2013. The Committee estimates that it will have a monetary reserve of \$618,804 on June 30, 2012. During 2012-2013, the Committee estimates that \$1,637 will be deducted from the reserve for an estimated reserve of \$617,167 on June 30, 2013, which would be within the maximum permitted by the order of approximately one fiscal period's operational expenses (\$ 927.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012-2013 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,500 producers of processed pears in the regulated production area and approximately 50 handlers of processed pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

According to the Noncitrus Fruits and Nuts 2011 Preliminary Summary issued in March 2012 by the National Agricultural Statistics Service, the total farm-gate value of summer/fall processed pears grown in Oregon and Washington for 2011 was \$35,315,000. Based on the number of processed pear producers in the Oregon and Washington,

the average gross revenue for each producer can be estimated at approximately \$23,543. Furthermore, based on Committee records, the Committee has estimated that all of the Oregon-Washington pear handlers currently ship less than \$7,000,000 worth of processed pears each on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington processed pears may be classified as small entities.

There are three pear processing plants in the production area, all located in Washington. All three pear processors would be considered large entities under the SBA's definition of small businesses.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2012-2013 and subsequent fiscal periods from \$7.73 to \$7.00 per ton of processed pears handled. The Committee unanimously recommended 2012-2013 expenditures of \$842,137 and an assessment rate of \$7.00 per ton of summer/fall processed pears handled. The assessment rate of \$7.00 is \$0.73 lower than the 2011-2012 rate. The Committee recommended the assessment rate decrease because of the 2012-2013 summer/fall processed pear promotion budget reduction.

The quantity of assessable summer/fall processed pears for the 2012-2013 fiscal period is estimated at 120,000 tons. Thus, the \$7.00 rate should provide \$840,000 in assessment income. Income derived from summer/fall processed pear handler assessments, monetary reserve, and interest and other income would be adequate to cover the budgeted expenses.

The major expenditures recommended by the Committee for the 2012-2013 fiscal period include \$654,000 for promotion and paid advertising, \$137,442 for research programs, \$24,000 for contracted administration by Washington State Fruit Commission, and \$12,500 for market access and trade policy. Budgeted expenses for these items in the 2011-2012 fiscal period were \$759,000, \$117,243, \$24,000, and \$12,500, respectively.

The Committee discussed alternate rates of assessment, but determined that the recommended assessment rate would be sufficient to fund the 2012-2013 summer/fall processed pear programs.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the Oregon-Washington producer price for the 2012-2013 fiscal period could average \$246 per ton of

summer/fall processed pears. Therefore, the estimated assessment revenue for the 2012-2013 fiscal period as a percentage of total producer revenue is 2.85 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189,

Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington processed pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to

Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012-2013 fiscal period begins on July 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable processed pears handled during such fiscal period; (2) this action decreases the assessment rate for assessable processed pears beginning with the 2012-2013 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions

issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927 - PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 927.237, the introductory text and paragraph (a) are revised to read as follows:

§ 927.237 Processed pear assessment rate.

On and after July 1, 2012, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) \$7.00 per ton for any or all varieties or subvarieties of pears for canning classified as "summer/fall" excluding pears for other methods of processing;

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Dated: November 29, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

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